

IN THE MATTER OF : BEFORE THE  
YOGINI DAHIWADKAR : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 12-024C

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**DECISION AND ORDER**

On March 18, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Yogini Dahiwadkar for an Accessory Apartment Conditional Use in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N.52 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising, notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Petitioner Yogini Dahiwadkar testified in support of the petition. She adopted the findings and conclusions of the Technical Staff Report (TSR) and presented no additional evidence. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 2<sup>nd</sup> Election District on the west side of Oak Forest Drive about 650 feet north of Old Frederick Road and has a street address of 2143 Oak Forest Drive (the "Property"). The Property is referenced as Tax Map 18, Grid 2, Parcel 378, Lot 12.

2. Site Description. The 0.272-acre Property is a pipestem lot in the Hollifield Estates II subdivision. It is improved with a two-story, single-family detached dwelling accessed from a long driveway shared with the adjoining Lot 12 to the north.

3. Vicinal Properties. All adjoining properties are zoned R-ED (Residential: Environmental Development) and are each improved with single-family detached dwellings. To the west is an Open Space lot.

4. Roads. Oak Forest Drive has about 22 feet of paving within an existing 50-foot wide right-of-way. The TSR states sight distance is not a problem.

5. Water and Sewer. The Property is served by public water and sewer.

6. General Plan. PlanHoward 2030 designates the Property as an Established Community on the Designated Place Types Map and as Low Density Residential on the Land Use Map

7. The Petition. Petitioner proposes to finish the currently unfinished basement for an accessory apartment. The floor plan submitted with the conditional use petition indicates the apartment would have a large bedroom, a bathroom, a small kitchen with an adjoining dining area, a recreation room, an exercise room and a storage room.

**CONCLUSIONS OF LAW**

**II. General Criteria for Conditional Uses (Section 131.B)**

**1. Harmony with the General Plan.** Section 131.B.1 requires me to evaluate whether the proposed conditional use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

**1. General Plan Policies.** PlanHoward 2030 designates the Property as an Established Community on the Designated Place Types Map and as Low Density Residential on the Land Use Map. Accessory Apartment Conditional Uses are presumptively compatible and appropriate in an R-20 district if the Petitioner adduces evidence that the proposed use is contemplated or addressed in the General Plan through its land use policies or furthers its recommendations, and/or if the use is positively evaluated under Zoning Regulations Sections 131.B.1.a and b. For the reasons set forth herein, the Hearing Examiner concludes the proposed use is harmonious in with the General Plan.

The residential use is a low intensity use. As the TSR emphasizes, the Property is only 152±-feet less than 12,000 sq. ft., which would have made the proposed accessory apartment

eligible for approval through an administrative process. The size is appropriate for the use. The subject dwelling is accessed from a pipestem driveway off a local road.

The proposed use would be combined with the principal dwelling use and would be located in the basement. This combination of uses is appropriate.

**2. Adverse Effect.** Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in such uses. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an R-20 zoning district. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects beyond those inherently associated with such a use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

Unlike Section 131.B.1, which concerns the harmony or compatibility of a proposed conditional use in relation to the General Plan, the adverse impact of a proposed conditional use is evaluated at the neighborhood level through four "adverse impact" criteria set forth in Zoning Regulations Section 131.B.2: (a) the adverse impact generated by the use's physical conditions; (b) the adverse impact generated by any structures and landscaping; (c) the adverse impact of any parking areas and loading, and; (d) the adverse impact of the proposed access to the use. When evaluating a proposed conditional use under these criteria, the

Hearing Examiner may deny the use only when one or more of the four adverse impacts generated by the use is atypical of or non-inherent to the operational characteristics of the conditional use category and the atypical adverse impact cannot be mitigated (often through conditions of approval.)

For the reasons stated below, the Hearing Examiner concludes the petitioner has met its burden of production and persuasion to establish this proposed use will not have atypical adverse effects on vicinal properties beyond those ordinarily associated with a two-family dwelling in an RC Zoning District.

**a. Physical Conditions.** Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The proposed use of the dwelling for an accessory apartment will generate more physical condition effects than a single-family dwelling but there is no evidence of any atypical physical conditions.

**b. Structures and Landscaping.** The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed accessory apartment would be established within the existing subject dwelling with no additions or enlargements. No walls or fences are proposed. The proposed use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

**c. Parking and Loading.** Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The dwelling has a double garage and there appears to be adequate room in front for an additional vehicle to meet the three off-street parking spaces required for the two uses.

**d. Access.** The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing ingress and egress drives will continue to provide safe access with adequate sight distance.

## **II. Specific Criteria for Accessory Apartments (Section 131.N.52)**

**Any new structures or additions will be designed to be compatible in scale and character with the surrounding residential neighborhood. Compatibility of character may be in architectural style, materials or details. Compatibility shall be demonstrated by architectural elevations or renderings submitted with the petition.**

No new structures or additions are proposed.

**b. Accessory apartments: on lots of less than 12,000 square feet in the R-ED, R-20, R-12 and R-SC Districts. (On lots of 12,000 square feet or larger, this is a permitted use in these districts).**

The floor area depicted on the final floor plans submitted with the building permit shall comply with the maximum floor area requirements in Section 128.A.13 for accessory apartments.<sup>1</sup>

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<sup>1</sup> Section 128.A.13 13 states that in dwellings with a net floor area of 2,000 square feet or less, the accessory apartment shall occupy no more than 40 percent of the net floor area of the building. For larger dwellings, the apartment shall occupy no more than one-third of the net floor area, up to a maximum of 1,500 square feet.

**ORDER**

Based upon the foregoing, it is this **21<sup>st</sup> day of March 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Yogini Dahiwadkar for an accessory apartment conditional use in an R-20 Zoning District is hereby **GRANTED;**

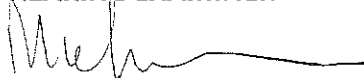
**Provided, however, that;**

1. The Conditional use shall be conducted in conformance with and shall apply only to the proposed accessory apartment as described in the petition and not to any other activities, uses, or structures on the Property.

2. The floor area of the accessory apartment on the final floor plans submitted with the building permit application shall comply with the accessory apartment maximum floor area requirements of Zoning Regulations Section 128.A.13.

3. Petitioner shall obtain a building permit to install the accessory apartment and basement kitchen.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFaivre

**Date Mailed:** March 28 2013

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.